

PHILIP R. WHITE  
MARC D. YOUNGELSON  
SILLS CUMMIS & GROSS P.C.  
One Rockefeller Plaza  
New York, New York 10020  
Tel: (212) 643-7000  
Fax: (212) 643-6500

Attorneys for plaintiffs and third party defendants  
Steven Alevy and Bankers Capital

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

AMUSEMENT INDUSTRY, INC., dba )  
WESTLAND INDUSTRIES, and )  
PRACTICAL FINANCE CO., INC., )

Plaintiffs, )

v. )

MOSES STERN, aka MARK STERN; )  
JOSHUA SAFRIN, FIRST REPUBLIC )  
GROUP REALTY LLC, EPHRAIM )  
FRENKEL, and LAND TITLE ASSOCIATES )  
ESCROW, )

Defendants. )

CASE NO. 07 CV 11586 (LAK) (GWG)

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that third party defendants Steven Alevy d/b/a Bankers

Capital ("Bankers Capital"), by and through its undersigned attorneys, hereby

respectfully move before the Honorable Gabriel W. Gorenstein, U.S.M.J., at the Daniel

Patrick Moynihan United States Courthouse, 500 Pearl Street, Room 510, New York, NY

10007, for an order pursuant to Fed. R. Civ. P. 9(b) and 12(b)(6) dismissing with

prejudice the Cross Claims of defendants Mark Stern and First Republic Realty Group

LLC ("defendants") in the above-referenced action.


PLEASE TAKE FURTHER NOTICE that by agreement of the parties, defendants' opposition papers are due on September 15, 2008, and Bankers Capital's reply papers are due on October 15, 2008.

PLEASE TAKE FURTHER NOTICE that in support of its motion, Bankers Capital will rely upon the accompanying memorandum of law dated August 1, 2008, the Certification of Marc D. Youngelson, executed on August 1, 2008, and the documents annexed thereto.

Dated: August 1, 2008

SILLS CUMMIS & GROSS P.C.  
One Rockefeller Plaza  
New York, New York 10112  
Attorneys for plaintiffs and third party  
defendants Steven Alevy and Bankers  
Capital.

By: \_\_\_\_\_

  
Philip R. White  
Marc D. Youngelson